Supreme Court, U.S.
FILED
AUG 15 2003
OFFICE OF THE CLERK

No. 03-88

In The Supreme Court of the United States

CHERYL BOOKRUM,

Petitioner,

v.

DAVID C. BOOKRUM, MELYNE F. BOOKRUM, OFFICE OF SERVICEMEMBERS' GROUP LIFE INSURANCE, A DIVISION OF THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, AND DOES 1 THROUGH 10, INCLUSIVE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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30 pp

QUESTIONS PRESENTED

The Petitioner brought an action in the United States District Court seeking one-half of the proceeds of a policy of insurance issued in accordance with 28 U.S.C. § 1965, et seq. (the Servicemembers' Group Life Insurance Act) for which she was not named a beneficiary. Petitioner's claim was based on her alleged community property interests, as governed by California law. On motion by this Respondent, the United States District Court dismissed Petitioner's action. The Ninth Circuit Court of Appeals upheld that ruling. There are three questions for review presented in Petitioner's petition:

1. Is there any basis for departing from *stare decisis* and overturning *Wissner v. Wissner*, 338 U.S. 655 (1950) which has for more than fifty years stood for the proposition that the Supremacy Clause requires that the important federal interests identified by Congress in enacting the "anti-attachment" provisions of the Servicemembers' Group Life Insurance legislation must take precedence over community property interests based on state law?

2. Is there "substantial justification" for departing from the precedent of *Wissner* and *Ridgway v. Ridgway*, 454 U.S. 46 (1981) and relying on a body of law that predates and contradicts the decisions in these cases such that overturning them would in fact constitute a restoration of prior law or would such action result in a dramatic and significant change in the law?

3. Can the Petitioner state a claim for which relief can be granted?

CORPORATE DISCLOSURE STATEMENT

Respondent The Prudential Insurance Company of America is a wholly owned subsidiary of Prudential Financial, Inc., a publicly traded corporation. Both Respondent The Prudential Insurance Company of America and its parent, Prudential Financial, Inc., are incorporated under the laws of the State of New Jersey and have their principal places of business in Newark, New Jersey.

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RESPONDENT'S BRIEF IN OPPOSITION

Pursuant to United States Supreme Court Rule 15, Respondent The Prudential Insurance Company of America ("Prudential"), hereby submits this brief in opposition to the petition for writ of certiorari.

STATEMENT OF THE CASE

Petitioner Cheryl Bookrum (hereinafter "Petitioner" or "Bookrum") seeks one-half of the proceeds of a life insurance policy issued to her late husband, David J. Bookrum, by the Office of Servicemembers' Group Life Insurance, a federal program administered by Prudential (Servicemembers' Group Life Insurance Act, 38 U.S.C. § 1965-1980 hereinafter "the Act" or "SGLI"). Petitioner is not a named beneficiary under the policy and instead makes her claim based on an unspecified "property interest" in the proceeds. Although not alleged in the complaint, the petition makes clear that Petitioner's alleged interest is based upon California community property laws.

Prudential moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). Respondents David C. Bookrum and Melyne F. Bookrum, the named beneficiaries on the SGLI policy, joined in that motion. The motion to dismiss was based upon the provisions of the Act and regulations promulgated to implement the Act which established that the servicemember has the absolute right to designate beneficiaries. *See* 38 U.S.C. § 1970(a), and 38 C.F.R § 9.4(b)(2003). Upon designation of beneficiaries, the Act

requires payment to the named beneficiaries, notwithstanding conflicting claims to proceeds asserted by others. *See* 38 U.S.C. § 1970(a).[1]

Prudential relied upon *Wissner v. Wissner*, 338 U.S. 655 (1950), and *Ridgway v. Ridgway*, 454 U.S. 46 (1981). These cases held that under the Supremacy Clause (U.S. Const. art. VI, § 2), the Act's requirement that the proceeds of the insurance be paid to designated beneficiaries must be upheld notwithstanding conflicting claims based on state law. Prudential specifically relied upon this Court's findings in *Wissner* and *Ridgway* that Congress placed great importance upon honoring the servicemembers' designation of beneficiaries in adopting the so-called "anti-attachment" or "exemption" provisions of the Act. In

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[1] Section 1970(a) and (g) state in pertinent part:

(a) Any amount of insurance under this subchapter in force on any member or former member on the date of the insured's death shall be paid, upon the establishment of a valid claim therefore, to the person or persons surviving at the date of the insured's death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death

[by the appropriate office]

* * *

(g) Any payments due or to become due under Sevicemembers' Group Life Insurance or Veterans Group Life Insurance made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

accordance with these decisions, this federal "benefit" program, narrowly limited to the proceeds of life insurance payable upon the death of a member of the Armed Forces, preempts state law claims under the Supremacy Clause.

Prudential also argued that there was no basis for departure from this precedent established by *Wissner* and *Ridgway*. Specifically, Prudential successfully established that there is no "prior and substantial body of law" that would establish the "special justification" required to stray from *stare decisis* and overturn *Wissner* or *Ridgway*.

In her complaint, Bookrum alleges that she is the widow of David J. Bookrum who died on or about March 9, 2002. Mr. Bookrum was a member of the Armed Services of the United States and, in that capacity, obtained life insurance through the Office of Servicemembers' Group Life Insurance. Bookrum alleged that the premiums for the policy were paid for with community property funds belonging to both the decedent and petitioner. Bookrum further alleges that on or about June 14, 1998, the decedent changed the designation of beneficiaries on the policy from a designation that beneficiaries were to be paid "by law" to one naming his parents, Respondents David C. Bookrum and Melyne F. Bookrum, as beneficiaries.

No claim to the life insurance proceeds was alleged on behalf of Petitioner's minor son, nor is the minor son a party to this action. Moreover, there was no allegation in the complaint that "the only significant asset the decedent left behind was the SGLI policy," nor any other allegations regarding the dependent minor child's claim to or need for the policy proceeds.

Petitioner appealed from the district court's ruling granting Prudential's motion to dismiss. A three-judge

panel of the Ninth Circuit Court of Appeals reviewed the matter *de novo*. The Court of Appeals upheld the district court's dismissal of this action and specifically its reliance upon *Wissner* and *Ridgway*.

ARGUMENT

I. INTRODUCTION.

Petitioner has not stated a claim for which relief can be granted. Under the Supremacy Clause, Congress' intent – that the proceeds of a SGLI policy be paid to designated beneficiaries only – must be upheld. In reaching the same conclusion, this Court found in *Wissner* and *Ridgway* that Congress specifically determined that the significant federal interests in preserving for the servicemember alone the right to devise the proceeds of this special form of life insurance is substantial and that, accordingly, conflicting state interest must give way. *Wissner* and *Ridgway* are clear, and there is no factual, legal, or rational basis for departing from the rule they long ago established. Since *Wissner* and *Ridgway* were decided, nothing has changed regarding the important federal interest recognized by Congress in ensuring the peace of mind of the servicemember: that his or her designated beneficiary will, in fact, receive the proceeds of a life insurance policy obtained under the Act. There is no claim or allegation that this rule established by Congress and upheld by this Court has not worked well, or that a departure from this rule, under which this type of insurance program has operated for more than fifty years, would not dramatically undermine and defeat these important federal interests.

Contrary to Petitioner's contention, there is no prior "intrinsically sounder" body of law to the contrary.

Moreover, altering the rule established by *Wissner* and *Ridgway* would pose a great risk of uncertainty, which would undermine the significant federal interests Congress intended to advance. First, changing the rule to allow states to dictate who should receive the policy proceeds would undermine servicemember morale, where the federally created benefit program was specifically designed to promote servicemember morale by letting each servicemember choose for him or herself how the proceeds should be distributed. SGLI is unlike other federal servicemember benefits programs, such as veterans benefits, which are intended to ensure the servicemembers' family and creditors as well. SGLI was specifically designed to give the servicemember the peace of mind of knowing that the person he wanted to provide for would be taken care of in the event of his death.

Second, if a servicemembers' designation of a beneficiary is not protected, the program would become less predictable and more complicated for the servicemember to comprehend. Every state could, theoretically, establish its own laws regarding distribution of the benefit proceeds. Moreover, within states there may be conflicts as to which court – civil, family, probate or other – should determine the distribution of the benefit. To make matters even more complicated, multiple states may claim rights to administer the benefits. Thus, numerous conflicting "rules" could be applied to determine proper payment of SGLI policy proceeds, and conflicts among states would create a legal maze to traverse, which would further erode the benefit with legal fees.

For example, members of the armed forces, who often relocate from state to state, would find their benefits governed by any one of these different jurisdictions, and the rules could change depending on the *temporary* posting for the servicemember. For some, like Petitioner, community property rules would apply to the distribution of the benefits. For others, community property rules would not apply. In some instances, such as where servicemembers are married outside the territory of the United States, simply determining which laws govern administration of the benefits may be the primary obstacle to overcome.

Finally, reliance on state law to determine the propriety and effect of a beneficiary designation could add significant delays and costs to the administration of this program under the Act because it would drastically increase the volume of potential complications and conflicts over payment and distribution of proceeds under SGLI policies.

Again though, most significantly, such a rule would eliminate the peace of mind borne of certainty that the current rule affords servicemembers who, as noted by Petitioner, at this very moment may find themselves in virtually every corner of the world.

In short, Petitioner cannot establish her claim without undermining the important federal interest of ensuring members of the Armed Forces that their selection of beneficiary for life insurance will be honored. *Wissner* and *Ridgway* govern, and there is no basis for revisiting those holdings.

II. THE SERVICEMEMBERS' GROUP LIFE INSURANCE ACT REFLECTS CLEAR AND SUBSTANTIAL FEDERAL INTERESTS.

The provisions of the Act convey upon servicemembers an intangible but significant benefit. The servicemember who designates a beneficiary gets nothing for him or herself, except the knowledge and security that proceeds will be paid to those selected beneficiaries and to no others. Although the value of such a benefit may be difficult to assess, the potential detriment to be suffered were the benefit withdrawn now, after more than fifty years of continued and successful protection, is not difficult to envision. Petitioner relies upon community property rights which allegedly are intended to provide for family and child support. Petitioner claims that these interests must prevail over this federal "benefit" program. Petitioner's claims completely ignore the substantial federal interests at stake for which, even without *Wissner* and *Ridgway*, the Supremacy Clause would demand protection.

A. The Servicemembers' Group Life Insurance Act.

The Servicemembers' Group Life Insurance Act (the "Act") and in particular the provisions that Petitioner challenges here, are essentially unchanged since the time the Court decided *Ridgway*. There, the Court outlined the history of this legislation:

> In order to make life insurance coverage available to members of the uniformed services on active duty, particularly in combat zones, Congress in 1965 enacted the [SGLI]. *See* H. R. Rep. No. 1003, 89th Cong., 1st Sess., 7th (1965). The impetus for the legislation was the escalating level of

hostilities and casualties in the then ongoing Vietnam conflict; this had prompted private commercial insurers to restrict coverage for service members. *See* 111 Cong. Rec. 24339 (1965) (remarks of Rep. Teague, Chairman of the House Committee of Veteran's Affairs; *see also* S. Rep. No. 619, 89th Cong. 1st Sess., 3 (1965). The earlier program of federally sponsored life insurance for servicemembers, *see* National Service Life Insurance Act of 1940, 54 Stat. 1008, *and* National Service Life Insurance Act of 1958, as amended, 38 U.S.C. § 701 *et seq.* (NSLIA), placed in effect shortly before the involvement of this country in World War II, had been allowed to lapse after the end of the Korean hostilities when commercial insurance generally became available to servicemembers. Accordingly, NSLIA coverage could not be obtained by any servicemembers on active duty in 1965. *See* 111 Cong. Rec. 24339 (1965) (remarks of Rep. Teague).

* * *

The SGLIA initially provided insurance only for members serving in specified services. 79 Stat. 880. The maximum coverage allowed was then $10,000. *Id.*, at 881. Since 1965, however, statutory changes have expanded both eligibility for coverage and the amount of insurance available. The program is operated on a presumptive enrollment basis; coverage is provided automatically and premiums are withheld from the service member's pay, unless the insurance is expressly declined or is terminated by written election. 38 U.S.C. §§ 767(a) and 769.

Ridgway, 454 U.S. at 51-52 (footnotes omitted).

Like the version of the statute in effect at the time of *Ridgway*, the current Act still provides for the United States to pay, depending on conditions and circumstances, at least a portion of the cost of this insurance program. *See* 38 U.S.C. § 1969. Moreover, the "order of precedence" for policy beneficiaries, with which the court in *Ridgway* was concerned, continues in the current version of the statute where the policy proceeds are to be paid first "to the beneficiary or beneficiaries as the member or former member may have designated by [an appropriately filed] writing received prior to death." 38 U.S.C. § 1970(a). Moreover, the Act continues to include the same "anti-attachment" or "exemption" provision considered by the court in *Ridgway,* with only minor changes. *See* Pub. L. No. 105-368 § 302(b) *and* 38 U.S.C. § 1970(g). That provision, as it currently exists, states "any payments due or to become due under Servicemembers' Group Life Insurance . . . made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." 38 U.S.C. § 1970(g).

B. This Court Has Already Twice Affirmed The Significance Of The Federal Interests Promoted By The "Anti-Attachment" Provision Of The Act And Its Predecessor Legislation.

The designation of beneficiary and "anti-attachment" or "exemption" provisions of the Act that were before this Court in *Ridgway* were virtually identical to the provisions contained in the predecessor National Service Life

Insurance Act (NSLIA) reviewed by the Court in *Wissner*. *See* 54 Stat. 1008 (repealed 1965). There the court found that these provisions granting to the qualified service-member the absolute right to designate beneficiaries, and ensuring that proceeds are actually paid to designated beneficiaries notwithstanding conflicting state law-based claims, reflect significant federal interests. *See Wissner*, 338 U.S. at 660-661. After quoting the designation of beneficiary provision in the NSLIA, the Court in *Wissner* said the following:

> Thus Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other. Pursuant to the congressional command, the Government contracted to pay the insurance to the insured's choice. He chose his mother. It is plain to us that the judgment of the lower court, as to one-half of the proceeds, substitutes the widow for the mother, who was the beneficiary congress directed shall receive the insurance money. We do not share appellee's discovery of congressional purpose that widows in community property states participate in the payments under the policy, contrary to the expressed direction of the insured. Whether directed at the very money received from the Government of an equivalent amount, the judgment below nullifies the soldier's choice and frustrates the deliberate purpose of Congress. It cannot stand.

Wissner, 338 U.S. at 658-659.

In addressing the constitutionality of these aspects of the law before it, the majority in *Wissner* also said:

> Certainly Congress in its desire to afford as much material protection as possible to its

> fighting force could wisely provide a plan of insurance coverage. *Possession of government insurance, payable to the relative of his choice, might well directly enhance the morale of the serviceman.* The exemption provision is his guarantee of the complete and full performance of the contract to the exclusion of conflicting claims. *The end is a legitimate one within the congressional powers over national defense, and the means are adapted to the chosen end.*

Id. at 660-661 (emphasis added).

The Court in *Ridgway* found that these "clear and substantial" federal interests would suffer "major damage" if the designation of beneficiary and exemption/anti-attachment provisions of the Act were required to yield to state family, and family property laws. *See Ridgway,* 454 U.S. at 54. The Court noted that "[t]he federal interest is especially strong because a substantial share of the proceeds of a [SGLI] policy may be attributable to general tax revenues." *Id.* at 57.

Both *Wissner* and *Ridgway* recognized that the interest Congress intended to promote by the designation of beneficiary and anti-attachment provisions of the Act, *may impact morale of the military itself. See Wissner*, 338 U.S. at 660, *and Ridgway*, 454 U.S. at 56-57. Both decisions recognized the validity and seriousness of these concerns.

It is not unreasonable to assume that the morale of servicemembers may suffer were they to know that the designation of beneficiary they make on their SGLI policy may not be honored because of community property, family law, or other state law based claims. It seems highly unlikely, for example, that such knowledge would improve or enhance their morale.

C. The Supremacy Clause Requires That The "Anti-Attachment" Provision Of The Act Preempt State Community Or "Exemption" Property Laws.

Whether a particular state action is preempted by federal law is always a question of Congressional intent. See *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133 (1990). "The purpose of Congress is the ultimate touchstone." *Id.* at 138 (quoting *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985)). In determining Congress' intent, the starting point is the explicit statutory language and the structure and purpose of the statute. *See FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

Domestic relations law is the domain of the states. *See In re Burrus*, 136 U.S. 586 (1890). This Court has said that "state family and family-property law must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden." *McCarty v. McCarty*, 453 U.S. 210 (1981) (citations omitted). This has never meant, however, that domestic relations laws are wholly immune from federal preemption. As to a state's interests, the rule is that "the relative importance to the state of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail." *Ridgway*, 454 U.S. at 54-55 (citations omitted).

Throughout the history of conflict between federal and state domestic relations laws, there have been different results depending on the facts, and the provisions of the particular statutes involved. In connection with the Act, and in particular the provisions involved here, however, this Court has consistently held that, when Congress gave

servicemembers the right to designate a beneficiary and protected the benefits from competing claims, that this is exactly what Congress meant. Petitioner makes no showing why this interpretation of congressional intent should now be changed.

III. THERE IS NO BASIS FOR DEPARTING FROM THE PRECEDENT OF *WISSNER* AND *RIDGWAY* WITH RESPECT TO COMPETING CLAIMS FOR SGLI POLICY PROCEEDS.

Petitioner has not offered any evidence or argument here or below that in any way casts doubt upon the propriety of this Court's findings in *Wissner* and *Ridgway* of Congressional intent and the federal interests promoted by the Act. Appellant has failed to show that there is any "special justification" required to overturn this precedent. *See Adarand Constructors v. Pena*, 515 U.S. 200 (1995) *citing Arizona v. Rumsey*, 467 U.S. 203 (1984). Petitioner's claim that there exists a prior doctrine that is "intrinsically sounder and verified by experience," is unavailing. *Id. citing Helvering v. Hallock*, 309 U.S. 106 (1940). No such "prior doctrine" exists. Nor is Petitioner correct in assuming that criticism of *Wissner* and *Ridgway* by some members of this Court in opinions addressing the nature of claims that can overcome anti-attachment provisions of *other* federal benefit programs demonstrates an intent or desire to eliminate the important, unique, and long-held benefit Congress bestowed on certain members of the military on active duty.

A. There Is No "Special Justification" For Overruling *Wissner* And *Ridgway*.

To establish a basis for departing from *stare decisis*, Petitioner cites *Adarand*. That case, however, does not support Petitioner here.

Petitioner's reliance on *Adarand* is misplaced because there is no "'intrinsically sounder' doctrine established in prior cases" on which the Court may rely to overrule *Wissner* and *Ridgway*. In *Adarand*, the Court explained the practical application of this test as follows:

> *Metro Broadcasting* undermined important principles of this Court's equal protection jurisprudence, established in a line of cases stretching back over 50 years, see *supra*, at 213-225. Those principles together stood for an "embracing" and "intrinsically sound" understanding of equal protection "verified by experience," namely, that the Constitution imposes upon federal, state, and local governmental actors the same obligation to respect the personal right to equal protection of the laws. This case therefore presents precisely the situation described by Justice Frankfurter in *Helvering:* We cannot adhere to our most recent decision without colliding with an accepted and established doctrine. We also note that *Metro Broadcasting's* application of different standards of review to federal and state racial classifications have been consistently criticized by commentators.

Id. at 231-232 (citations omitted).

Here, there is no "line of cases stretching back over 50 years" that would justify departure from the clearly established precedent *Wissner* and *Ridgway* represent. To

the contrary, these two decisions *are* the fifty years of precedent upon which more than two generations of America's servicemembers have relied, and Petitioner has offered not one good reason why this should change.

Petitioner's suggestion that the earlier cases mentioned in *Wissner* that dealt with claims for alimony or child support constitute this "intrinsically sounder" body of law is inaccurate. In *In re Guardianship of Bagnall*, 29 N.W. 2d 597 (Iowa 1947), the Supreme Court of Iowa addresses a claim for *alimony* made against the property of a mentally incompetent divorced husband who was a veteran. The property was acquired by his guardian with the use of various veteran's benefits and disability pension monies earned as a result of his military service. *Bagnall* did not involve a deceased servicemember, and the benefits involved were not the proceeds of a policy of life insurance issued during a period of his active duty in the military.

Moreover, the claim being made in *Bagnall was not for the benefits or proceeds themselves*, but for property that was acquired with those benefits. As the court in *Bagnall* explained, the question before it was "whether the property of the mentally incompetent husband, in the possession of his guardian, which has been acquired with benefit payments [consisting of veterans' disability compensation, pension, war risk insurance, and adjusted service compensation], is exempt, under either the statutes of the United States or the statutes of Iowa, from the enforced payment of the judgment of the plaintiff wife for alimony." *Bagnall,* 29 N.W. at 598. This is not the question Petitioner raises here.

Bagnall and the other decisions cited by Justice Minton in his dissent in *Wissner* (*see, e.g., Schlaefer v.*

Schlaefer, 112 F.2d 177 (D.C. Cir. 1940), *Gaskins v. Security First Nat'l Bank of L.A.*, 86 P.2d 681 (Cal.App. 1939), and *Hollis v. Bryan*, 143 So. 687 (Miss. 1932) simply do not deal with the issues involved in the present case, in *Wissner*, or in *Ridgway*. All of those cases involved a veteran, not a deceased servicemember. None of them concerned the disposition of proceeds of a SGLI life insurance policy. And although those cases stand for the general proposition that not all federal veterans benefit programs that include exemption provisions can withstand claims for alimony or child support, they do not constitute an "intrinsically sounder" body of law that would be justification for over-turning *Wissner* and *Ridgway*.

B. The Precedent Challenged Here Is Not A Recent Departure From Prior Law.

For over 50 years servicemembers have relied on the validity and enforceability of their right to designate a beneficiary of their choice under this unique life insurance program. To now undermine the choices already made by many, who due to recent hostilities may well have already given their lives in service of their country, would exact a terrible penalty. As the Court explained in *Adarand*, such a penalty should be avoided at all costs.

> It is worth pointing out the difference between the applications of *stare decisis* in this case and in *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992). *Casey* explained how considerations of *stare decisis* inform the decision whether to overrule a long-established precedent that has become integrated into the fabric of the law. Overruling precedent of that kind naturally

> may have consequences for "the ideal of the rule of law," *id.*, at 854. In addition, such precedent is likely to have engendered substantial reliance, as was true in *Casey* itself, *id.*, at 856 ("For two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail"). But in this case, as we have explained, we do not face a precedent of that kind, because *Metro Broadcasting* itself *departed* from our prior cases – and did so quite recently. By refusing to follow *Metro Broadcasting*, then, we do not depart from the fabric of the law; we restore it. We also note that reliance on a case that has recently departed from precedent is likely to be minimal, particularly where, as here, the rule set forth in that case is unlikely to affect primary conduct in any event. Cf. *Allied-Bruce Terminix Cos.* v. *Dobson*, 513 U.S. 265, 130 L. Ed. 2d 753, 115 S. Ct. 834 (1995), (declining to overrule *Southland Corp.* v. *Keating*, 465 U.S. 1, 79 L. Ed. 2d 1, 104 S. Ct. 852 (1984), where "private parties have likely written contracts relying upon *Southland* as authority" in the 10 years since *Southland* was decided).

Id. at 233-234.

The Servicemembers' Group Life Insurance Act and its predecessor statutes have been in effect for over fifty years. Prudential has been paying benefits under policies issued pursuant to this program to the beneficiaries designated by the servicemembers. All these years of reliance on the provisions of the Act have created a long-standing precedent and well-established custom and

practice in the Armed Services. Servicemembers obtain a SGLI policy, designate beneficiaries, and defend their country believing that if they die, the benefits of the policy will be paid to their chosen beneficiary. Undermining this practice is not justified factually, legally or socially, and would run contrary to the very test upon which Petition relies.

C. *Wissner* And *Ridgway* Do Not "Stand Alone" Or "Stick Out Like Sore Thumbs" But Are In Fact Consistent With A Long Line Of Decisions Resolving Conflicts Between State Law And Federal Benefit Programs.

One reason the federal life insurance program Petitioner challenges should be treated differently is because it *is* different. Life insurance, unlike other federal benefit programs, does not pay proceeds until the servicemember dies. The proceeds ("benefits") are not paid to the servicemember, but to beneficiaries. Decisions like *Wissner* and *Ridgway* clearly contemplate that the servicemember's life may well be lost while in service to his or her country. It is, after all, that very eventuality that apparently prompted the enactment of the statute in the first place. *See, e.g.*, *Ridgway*, 454 U.S. at 50 (explaining that the legislation was enacted "[i]n order to make life insurance coverage available to members of the uniformed services on active duty, particularly in combat zones.") It makes sense, therefore, to treat this "benefit" differently than one would treat veterans' pensions or disability payments.

Moreover, *Wissner* and *Ridgway* are completely consistent with other decisions involving conflicts between state community property laws and claims of exemption for federal benefit programs. In *Free v. Bland*, 369 U.S.

663 (1962), the Court addressed a conflict between rights created by state community property law and the right of survivorship in United States Savings Bonds issued in co-ownership form. In *Hisquierdo v. Hisquierdo*, 439 U.S. 572 (1979), the Court considered a conflict arising from provisions of the Railroad Retirement Act of 1974. In *McCarty v. McCarty*, 453 U.S. 210 (1981), the Court dealt with a conflict between community property rights and military retirement pay. In each of these cases, this Court addressed allegations that rights created and guaranteed by state community property laws were unconstitutionally denied by federal legislation. The question in these cases was whether rights created by federal legislation should be given precedence because of the Supremacy Clause of the United States Constitution even though this would effectively trump community property rights created by state law. In every instance, the Court found that based on congressional intent, the Supremacy Clause required preemption.

D. Justice O'Connor's Dissent In *Rose* Does Not Signal An Intent Or Desire To Change The Rule Of SGLI Preemption And Certainly Does Not Support Ignoring Supreme Court Precedent.

Petitioner's speculation that Justice O'Connor's dissenting opinion in *Rose v. Rose*, 481 U.S. 619 (1987), supports overturning *Ridgway* and *Wissner*, is unjustified. *Rose* involved an appeal from a state court contempt ruling entered against a totally disabled veteran who refused to comply with the court order that he make child support payments. The veteran in *Rose* claimed that his sole source of income was composed entirely of benefits paid by the Veteran's and Social Security Administration,

and that these benefits should be exempt from the order that he pay child support. The majority of the court in *Rose* held that the state contempt order should be upheld. Justice O'Connor concurred with this holding but filed a separate opinion because, as she explained, she would "rest this conclusion ... on a ground that the court disdains – the distinction between familial support obligations and other debts." *Rose*, 481 U.S. at 636. Apparently Justice O'Connor was concerned with the majority's discussion of *Ridgway*. With respect to *Ridgway*, the majority of the court in *Rose* said:

> Admittedly, in *Ridgway*, we rejected a proposed construction of [38 U.S.C. Section] 770(g) that would have barred its application to the children's equitable claim, 454 U.S., at 60-61, and we were unable to agree that the distinction between family support obligations and community property divisions would sustain an except to the statute's operation. *Id.* at 61-62, n. 11; *see also*, *id.* at 68-70 (Powell, J., dissenting). But the critical difference between *Ridgway* and the present case is that Congress has not made appellant the exclusive beneficiary of the disability benefits. As we have demonstrated, these benefits are intended to support not only the veteran, but the veteran's family as well. Recognizing an exception to the application of [38 U.S.C. Section] 3101(a)'s prohibition against attachment, levy, or seizure in this context further, not undermine, the federal purpose in providing these benefits. Therefore, regardless of the merit of the distinction between the moral imperative of family support obligations and the businesslike justifications for community property division, we conclude that [Section] 3101(a) does not

> extend to protect a veteran's disability benefits from seizure where the veteran invokes that provision to avoid an otherwise valid order of child support.

Id. at 633-634.

Petitioner argues that Justice O'Connor's comments justify distinct treatment of state law based claims to federal benefits which by federal statute are exempt from "attachment, levy, or seizure" due to the difference between familial support obligations and other debts. But the case it bars does not involve veteran's benefits such as those involved in *Rose*, federal railroad employee's retirement benefits involved in *Hisquierdo*, or with military retirement pay as in *McCarty*. This case is solely about life insurance for members of the Armed Services on active duty.

Although Justice O'Connor's opinion in *Rose* certainly makes clear her belief that the exemption provision of the statute providing veteran's benefits before the court in that case was not intended "to protect the veteran against claims by his family." *Rose*, 481 U.S. at 637. Her comments also support the argument that the Servicemembers' Group Life Insurance Act, the program at issue here and in *Ridgway*, should *not* be subject to such state law claims, whether based on community property, family law or anything else. As Justice O'Connor explained:

> The Court apparently views *Ridgway v. Ridgway*, 454 U.S. 46 (1981), as an insuparable obstacle to acknowledging that this distinction makes the difference here. I disagree: while *stare decisis* concerns may counsel against overruling *Ridgway's* interpretation of the Servicemen's Group Life Insurance Act, I see no reason whatsoever to *extend Ridgway's* equation of business debts with

> family support obligations absent the clearest Congressional direction to do so.

Id. at 636 (emphasis added).

Third, nothing in Justice O'Connor's opinion in *Rose* supports overruling the precedent established by *Ridgway* or *Wissner* as it pertains to the Servicemembers' Group Life Insurance Act. As to this "benefit program," there is simply no reason whatsoever to alter or upset this precedent. The significant and strong federal interest promoted by the designation of beneficiary and exemption provisions of the Act justify its unique position.

IV. SUMMARY.

SGLI provides life insurance for members of the Armed Services. The "benefit" conveyed on servicemembers by the provisions of the program under attack is the peace of mind gained from knowing that the beneficiaries they designate, and no others, will receive the proceeds of the policy, promptly and without litigation. This Court has twice held that this intangible benefit serves to promote vital federal interests: the morale and performance of the military. The 50 years of precedent reflected by the *Wissner* and *Ridgway* decisions establish that protection of these federal interests is what Congress intended, and that they must take precedence over competing state interests.

Petitioner has overlooked the most significant issue at stake. It is not the nature of her claim, or the validity, or source of that claim, whether it be in family law, child support, spousal support, or community property law, that matters. Instead, in accordance with long-standing

principles applied to the determination of conflicts between State and Federal law, it is the intent of Congress that must be considered. It is, after all, the nature and extent of the federal interests, as reflected by the acts of Congress, that will determine whether the Supremacy Clause requires that the federal laws take precedence over conflicting state laws.

Petitioner has offered nothing to suggest that the provisions of the Act in question do not promote the morale or performance of the military, or that undermining the long-held and well-established rule of exemption will not have a detrimental effect on these important federal interests. None of the authorities upon which Petitioner relies concern or address these issues. Petitioner does not even address the validity, legitimacy or strength of the federal interests promoted by the Act. Petitioner can state no claim for which relief can be granted. The District Court's dismissal of this case, and the Ninth Circuit's affirmation of the decision should be left alone.

V. CONCLUSION

It is respectfully submitted that the Petition for Writ of Certiorari should be denied.

DATED: August 15, 2003

Respectfully submitted,

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